NORTH	CAROLIN	ĪΑ
TACATATA		

IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 10 CVS 009014

WAKE COUNTY	2010 MAY 26 PM 3:52	SUPERIOR COURT DIVISION 10 CVS 009014
	WAKE COURTY CSC.	
THE NORTH CAROLINA)	
)	Temporary Restraining Order
v.)	
ANNETTE H. EXUM, Atto	mey,) Respondent)	

THIS MATTER came on to be heard and was heard by the undersigned Judge of Superior Court of Wake County pursuant to a motion for temporary restraining order and petition for preliminary injunction filed by the North Carolina State Bar. Petitioner, the North Carolina State Bar was represented by Brian P.D. Oten and Katherine E. Jean. Respondent, Annette H. Exum, was not present but had notice of the proceeding. Based upon the verified petition and motion with attachments and the evidence introduced at the hearing, the Court makes the following:

FINDINGS OF FACT

- 1. Respondent, Annette H. Exum, was licensed to practice law in North Carolina on 4 April 2003.
- 2. Exum's address of record on file with the North Carolina State Bar is 1901 New Bern Avenue, Raleigh, North Carolina, 27610.
- 3. On 2 March 2010, the North Carolina State Bar served Exum with a Letter of Notice in grievance file no. 09G1155. The Letter of Notice directed Exum to provide a narrative response to the allegations therein and to produce certain records related to her attorney trust account within 15 days. Exum timely provided a narrative response, but did not provide any trust account records until a State Bar investigator began attempting to contact Exum almost daily in early May 2010. On 14 May 2010, Exum produced some, but not all, of the trust account documentation requested by the State Bar.
- 4. The State Bar's preliminary investigation of Exum's trust account records indicates that Exum has failed to comply with the provisions of Rules 1.15-2 and 1.15-3 of the Rules of Professional Conduct regarding handling entrusted funds and trust account management. Specifically:
 - a. In September 2008, Exum made a \$2,500.00 counter withdrawal from the trust account. It is not clear from the withdrawal slip whether this was a cash withdrawal.

- b. On three separate occasions in October 2008, funds were automatically transferred from Exum's trust account into her law firm operating account to cover an overdraft in the operating account. In total, \$643.99 was automatically debited from Exum's trust account in October 2008 due to these overdraft protection transactions.
- c. In January 2009, \$81.52 was automatically transferred from Exum's trust account into her operating account to cover an overdraft in the operating account. This automatic withdrawal depleted all the funds in Exum's trust account at that time.
- d. By using her attorney trust account as overdraft protection for her operating account such that entrusted funds were automatically debited from the trust account when there was a shortfall in the operating account, Exum used entrusted funds to obtain credit or personal benefit for herself or a person other than the beneficial owner of the funds.
- e. The withdrawals from Exum's trust account noted in paragraphs a through c above were not authorized by any of Exum's clients, nor were they attributed to any client balance in the trust account.
- f. For the nine trust account deposits Exum made during the period for which records were provided, Exum identified neither the source(s) of funds nor the client(s) for whose benefit the funds were held.
- g. Exum failed to file a directive with Wachovia instructing the bank to notify the State Bar if an item drawn on her trust account is presented against insufficient funds.
- h. Exum failed to provide a client ledger and trust account reconciliations upon request by the State Bar.
- i. As of April 2010, Exum's trust account was overdrawn by \$1,236.88.
- 5. The foregoing facts establish that Exum has mishandled entrusted funds in violation of Rules 1.15-2 and 1.15-3 of the Rules of Professional Conduct.
- 6. Exum's use of her trust account as an overdraft protection account puts client funds at risk of misappropriation and subjects them to improper disbursement without the client's (or Exum's) knowledge or authorization. Her failure to comply with the record-keeping and bank directive requirements of the Rules further jeopardizes client funds which may be entrusted to her.
- 7. A need for prompt action exists to ensure that additional client funds are not mishandled to their detriment.

Based upon the foregoing Findings of Fact, the Court makes the following

CONCLUSIONS OF LAW

- 1. Prompt action, pursuant to N.C. Gen. Stat. § 84-28(f), is necessary to preserve the status quo while the State Bar conducts an analysis of Exum's trust and operating accounts and to ensure that client funds are not mishandled.
- 2. Exum should be enjoined from accepting any further funds from or on behalf of clients or other individuals in a fiduciary capacity, from writing checks against any account in which client or fiduciary funds have been deposited, and from directing or permitting any employee or agent to withdraw funds from and/or to draw any checks or other instruments upon any account in which client or fiduciary funds have been deposited until and unless expressly permitted by subsequent orders of the Court.
- 3. To assist the State Bar's analysis of her trust and operating accounts, Exum should provide the State Bar with records of all accounts in which client or fiduciary funds have been deposited and with all client files requested by the State Bar as set forth below.
- 4. Exum should not be permitted to serve in any fiduciary capacity, including trustee, escrow agent, personal representative, executor or attorney-in-fact until further order of this Court.

THEREFORE, IT IS HEREBY ORDERED:

- 1. Annette H. Exum is enjoined from accepting or receiving any funds from clients or third parties in a fiduciary capacity, from withdrawing any funds from and/or drawing any checks or other instruments against any account in which client or fiduciary funds have been deposited and from directing or permitting any employee or agent to withdraw funds from and/or to draw any checks or other instruments upon any account in which client or fiduciary funds have been deposited until and unless expressly permitted by subsequent orders of the Court.
- 2. This matter is scheduled for a hearing on the Petitioner's Motion for a Preliminary Injunction on the 7th day of June, 2010 at 10:00 AM in the Wake County Courthouse, Courtroom 5B in Raleigh, North Carolina.
- 2. Exum or any other person having custody or control of records relating to any account into which client or fiduciary funds have been deposited shall immediately produce to the North Carolina State Bar for inspection and copying all of Exum's financial records relating to any account into which client or fiduciary funds have been deposited, including, but not limited to bank statements, canceled checks, deposit slips, client ledger cards, check stubs, debit memos and any other records relating to the receipt and disbursement of client and/or fiduciary funds.
- 3. Exum or any other person having custody or control over records relating to persons or entities for whom Exum or Exum's law firm has provided legal services shall

produce to the North Carolina State Bar for inspection and copying all records and documents relating to each such person or entity including but not limited to client files, billing statements, memoranda and receipts. Documents relating to current clients shall be produced within 24 hours of demand by the State Bar. Documents relating to closed client files shall be produced within 3 days of demand by the State Bar.

- 4. If Exum does not have possession of the minimum records required to be maintained regarding trust and fiduciary funds pursuant to Rule 1.15-3 of the Rules of Professional Conduct, she shall direct the bank(s) where her bank account(s) are maintained, within 10 days of the date of this order, to copy and transmit any such missing records directly to the North Carolina State Bar at Exum's expense.
- 5. Exum shall not serve in any fiduciary capacity, including trustee, escrow agent, personal representative, executor or attorney-in-fact until and unless she is permitted to do so by order of this Court.
- 6. This Temporary Restraining Order shall remain in effect until the 7th day of June, 2010 unless extended by further order of this Court.

7. No security is required by the Plaintiff.

THIS the Zoday of May, 2010.

Superior Court Judge Presiding